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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,682	07/01/2003	Gloria Falla	PL083USQ	5335

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EXAMINER

HALE, GLORIA M

ART UNIT PAPER NUMBER

3765

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/611,682

Applicant(s)

FALLA ET AL.

Examiner

Gloria Hale

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1-15-04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: On page 1, paragraph 2, line 2 insert - - to - - after "relates". In paragraph 0004, line 4 change "this" to - thus- -.. In line 5, after "order" insert to". In line 6, after "complete" insert "the". On page 3, paragraph 10, line 7 the words "stretchable" and "the" need to be reversed.

Appropriate correction is required.

Claim Objections

Claim 1 is objected to because of the following informalities: In claim 1, last line the term "blend cotton based" is unclear. A better recitation would be a "blended cotton" or "cotton based blend" or "cotton blend material". The terminology "removing a trim" is unclear and confusing since it appears that a trim or piping is being removed instead of a selvage edge. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 4,6,7,9 and 14-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 4 it is not clear as to how the finished edge resists unraveling in that a hemmed or sewn edge would still unravel and applicant has not claimed a

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heating step to fuse the edge to resist unraveling. In claims 6 and 7 the bonding in selected areas has not been written in method step form. It is not clear as to how the adhesive layer would only bond certain areas. In claim 9 the recitation "maintains a selected stretchability" is unclear and does not have proper antecedent basis since it is not clear that the fabric was stretchable to begin with since it has not been claimed as an elastic, stretchable material or that it has stretchable properties. In claims 14 and 19 the recitation "to form a stretchable laminate" also has not been previously described as stretching nor has a stretchable fabric been introduced to provide the stretch when the laminate is formed. In claim 19, line 9 "said stretchable" is the correct recitation.

However, the claims, as best understood, have been examined on their merits.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-7, 9, 14, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Gluckin (US 5,154,659).

Gluckin discloses a method of forming an undergarment by inserting an adhesive layer 80 between first 78 and second 92 fabric layers to form a subassembly (see Gluckin, col. 3, lines 9 – 41, figure 3 and 5-11), causing the adhesive layer to form a laminate(col. 3, lines 44-51) with heat sealers 94,96 bonding in the claimed areas and removing trim from the outer periphery to form a finished, scalloped edge 109 and wherein the fabric layers include a cotton-blend material. The film of the Gluckin brassiere laminate maintains its stretchability as claimed. (See Gluckin, Abstract).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 15 and 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gluckin (US 5,154,659) in view of Bracht (US 2,915,067). Gluckin discloses the invention substantially as claimed including the scalloped edge. However, Gluckin does not disclose the adhesive fusible material as being a polyethylene and ethylene vinyl acetate copolymer or the specific film content percentages of polyester, cotton and spandex. Bracht discloses a fusible support material formed of polyethylene material. (See Bracht, col. 2, lines 28-37).

Accordingly it would have been obvious to modify the brassiere of Gluckin to include a polyethylene support of fusible material in order to provide support to the breasts of the wearer.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gluckin (US 5,154,659) .

Gluckin discloses the invention substantially as claimed. However, Gluckin does not specifically disclose the exact claimed percentages of cotton, polyester and spandex materials. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the brassiere of Gluckin to construct it of the claimed

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specific fiber content percentages since it has been held to be within the skill of one of ordinary skill in the art to select a known material, such as a cotton, polyester and spandex blend which are commonly used in garment manufacturing and in undergarment construction and to select such a material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. It also would have been obvious to find the optimum percentage fiber content of each fiber since it has been held that discovering the optimum value of a result effective variable involves only routine skill in the art. In re Boesch 617 F. 2nd 272,205 USPQ 215 (CCPA 1980).

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gluckin in view of Butt (US 5,820,443).

Gluckin discloses the laminated brassiere structured substantially as claimed.

However, Gluckin does not specifically disclose the gore reinforcement layer between the first fabric layer and adhesive layer. Burr discloses a fabric reinforcement fabric 15 located as claimed in order to provide support at the central area of the bra.

Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the brassiere of Gluckin to include a central gore fabric reinforcement as disclosed by Burr in order to provide extra support at the central area of the bra. (See Burr, col. 2, lines 25-35; col. 4, lines 10-19,66 – col.5,line 39).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11

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F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).


Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-39 of U.S. Patent No. 6,837,771 in view of Gluckin (US 5,154,659). The present claims are an obvious modification of the previous patent claims in that the present inventive material method is the same material laminate method and material with the obvious modification of a cotton based material within the laminate as disclosed by Gluckin.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tuesday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gloria Hale
Primary Examiner
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